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**SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-94961; File No. SR-NYSEArca-2022-30]**

**Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Permit the Use of Custom Baskets by Certain Series of Active Proxy Portfolio Shares Listed and Traded on the Exchange Pursuant to NYSE Arca Rule 8.601-E**

May 23, 2022

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (“Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on May 12, 2022, NYSE Arca, Inc. (“NYSE Arca” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to facilitate the use of Custom Baskets by certain series of Active Proxy Portfolio Shares listed and traded on the Exchange pursuant to NYSE

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

Arca Rule 8.601-E. The proposed rule change is available on the Exchange's website at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange adopted NYSE Arca Rule 8.601-E for the purpose of permitting the listing and trading, or trading pursuant to unlisted trading privileges, of Active Proxy Portfolio Shares, which are securities issued by an actively managed open-end investment management company.<sup>4</sup> The Exchange subsequently amended Rule 8.601-E to provide for the use of Custom Baskets, which are portfolios of securities that are different from the Proxy Portfolio and are otherwise consistent with the exemptive relief issued pursuant

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<sup>4</sup> See Securities Exchange Act Release No. 89185 (June 29, 2020), 85 FR 40328 (July 6, 2020) (SR-NYSEArca-2019-95) (Notice of Filing of Amendment No. 6 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 6, to Adopt NYSE Arca Rule 8.601-E to Permit the Listing and Trading of Active Proxy Portfolio Shares and To List and Trade Shares of the Natixis U.S. Equity Opportunities ETF Under Proposed NYSE Arca Rule 8.601-E) (the "Natixis Approval Order").

to the Investment Company Act of 1940 (the “1940 Act”) applicable to a series of Active Proxy Portfolio Shares.<sup>5</sup>

### Background

Rule 8.601-E sets forth certain rules related to the listing and trading of Active Proxy Portfolio Shares. Under Rule 8.601-E(c)(1), the term Active Proxy Portfolio Shares means a security that (a) is issued by an investment company registered under the 1940 Act (an “Investment Company”) organized as an open-end management investment company that invests in a portfolio of securities selected by the Investment Company’s investment adviser consistent with the Investment Company’s investment objectives and policies; (b) is issued in a specified minimum number of shares, or multiples thereof, in return for a deposit by the purchaser of the Proxy Portfolio or Custom Basket, as applicable, and/or cash with a value equal to the next determined net asset value (“NAV”); (c) when aggregated in the same specified minimum number of Active Proxy Portfolio Shares, or multiples thereof, may be redeemed at a holder’s request in return for the Proxy Portfolio or Custom Basket, as applicable, and/or cash to the holder by the issuer with a value equal to the next determined NAV; and (d) the portfolio holdings for which are disclosed within at least 60 days following the end of every fiscal quarter.

Rule 8.601-E(c)(2) defines the term “Actual Portfolio” as identities and quantities of the securities and other assets held by the Investment Company that shall form the basis for the Investment Company’s calculation of NAV at the end of the business day.

Rule 8.601-E(c)(3) defines the term “Proxy Portfolio” as a specified portfolio of

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<sup>5</sup> See Securities Exchange Act Release No. 93120 (September 24, 2021), 86 FR 54257 (September 30, 2021) (SR-NYSEArca-2021-64) (the “Custom Basket Approval Order”).

securities, other financial instruments, and/or cash designed to track closely the daily performance of the Actual Portfolio of a series of Active Proxy Portfolio Shares as provided in the exemptive relief pursuant to the 1940 Act applicable to such series. The website for each series of Active Proxy Portfolio Shares shall disclose the information regarding the Proxy Portfolio as provided in the exemptive relief pursuant to the 1940 Act applicable to such series, including the following, to the extent applicable:

- (i) Ticker symbol;
- (ii) CUSIP or other identifier;
- (iii) Description of holding;
- (iv) Quantity of each security or other asset held; and
- (v) Percentage weighting of the holding in the portfolio.

Rule 8.601-E(c)(4) defines the term “Custom Basket” as a portfolio of securities that is different from the Proxy Portfolio and is otherwise consistent with the exemptive relief issued pursuant to the 1940 Act applicable to a series of Active Proxy Portfolio Shares.

#### Proposed Rule Change

Commentary .01 to Rule 8.601-E requires the Exchange to file separate proposals under Section 19(b) of the Act before listing and trading any series of Active Proxy Portfolio Shares on the Exchange. Pursuant to this provision, the Exchange submitted proposals relating to the following series of Active Proxy Portfolio Shares that are currently listed and traded on the Exchange (each, a “Fund” and, collectively, the “Funds”):<sup>6</sup>

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<sup>6</sup> The approval orders and notices of immediate effectiveness pursuant to which

- Natixis U.S Equity Opportunities ETF<sup>7</sup>
- T. Rowe Price Blue Chip Growth ETF, T. Rowe Price Dividend Growth ETF, T. Rowe Price Growth Stock ETF, and T. Rowe Price Equity Income ETF<sup>8</sup>
- American Century Mid Cap Growth Impact ETF and American Century Sustainable Equity ETF<sup>9</sup>
- Natixis Vaughan Nelson Select ETF and Natixis Vaughan Nelson Mid Cap ETF<sup>10</sup>
- Stance Equity ESG Large Cap Core ETF<sup>11</sup>

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shares of the Funds are listed and traded are referred to collectively herein as the “Prior Filings.”

<sup>7</sup> See Natixis Approval Order, supra note 4.

<sup>8</sup> See Securities Exchange Act Release No. 89191 (June 30, 2020), 85 FR 40358 (July 6, 2020) (SR-NYSEArca-2019-92) (Notice of Filing of Amendment No. 3 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 3, to List and Trade Four Series of Active Proxy Portfolio Shares Issued by T. Rowe Price Exchange-Traded Funds, Inc. under NYSE Arca Rule 8.601-E) (the “T. Rowe Price Approval Order”).

<sup>9</sup> See Securities Exchange Act Release No. 89192 (June 30, 2020), 85 FR 40699 (July 7, 2020) (SR-NYSEArca-2019-96) (Notice of Filing of Amendment No. 5 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 5, to List and Trade Two Series of Active Proxy Portfolio Shares Issued by the American Century ETF Trust under NYSE Arca Rule 8.601-E) (the “American Century Approval Order”).

<sup>10</sup> See Securities Exchange Act Release No. 89438 (July 31, 2020), 85 FR 47821 (August 6, 2020) (SR-NYSEArca-2020-51) (Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 2, to List and Trade Shares of Natixis Vaughan Nelson Select ETF and Natixis Vaughan Nelson MidCap ETF under NYSE Arca Rule 8.601-E) (the “Natixis Vaughan Approval Order”).

<sup>11</sup> See Securities Exchange Act Release No. 91266 (March 5, 2021), 86 FR 13930 (March 11, 2021) (SR-NYSEArca-2020-104) (Order Approving a Proposed Rule Change, as Modified by Amendment No. 2, to List and Trade Shares of the Stance Equity ESG Large Cap Core ETF under NYSE Arca Rule 8.601-E) (the “Stance Approval Order”).

- T. Rowe Price U.S. Equity Research ETF<sup>12</sup>
- Fidelity Sustainability U.S. Equity ETF and Fidelity Women’s Leadership ETF<sup>13</sup>
- Putnam Sustainable Future ETF, Putnam Sustainable Leaders ETF, Putnam Focused Large Cap Growth ETF, and Putnam Focused Large Cap Value ETF<sup>14</sup>
- American Century Sustainable Growth ETF<sup>15</sup>
- Nuveen Dividend Growth ETF, Nuveen Small Cap Select ETF, and Nuveen Winslow Large-Cap Growth ESG ETF<sup>16</sup>
- Nuveen Growth Opportunities ETF<sup>17</sup>

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<sup>12</sup> See Securities Exchange Act Release No. 91322 (March 15, 2021), 86 FR 14980 (March 19, 2021) (SR-NYSEArca-2021-17) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Listing and Trading of Shares of the T. Rowe Price U.S. Equity Research ETF under NYSE Arca Rule 8.601-E) (the “T. Rowe Price Notice”).

<sup>13</sup> See Securities Exchange Act Release No. 91514 (April 8, 2021), 86 FR 19657 (April 14, 2021) (SR-NYSEArca-2021-23) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change List and Trade Shares of the: Fidelity Women’s Leadership ETF and Fidelity Sustainability U.S. Equity ETF) (the “Fidelity Notice”).

<sup>14</sup> See Securities Exchange Act Release No. 91895 (May 13, 2021), 86 FR 27126 (May 19, 2021) (SR-NYSEArca-2021-39) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to List and Trade Shares of the Putnam Focused Large Cap Growth ETF; Putnam Focused Large Cap Value ETF; Putnam Sustainable Future ETF; and Putnam Sustainable Leaders ETF) (the “Putnam Notice”).

<sup>15</sup> See Securities Exchange Act Release No. 92052 (May 27, 2021), 86 FR 29810 (June 3, 2021) (SR-NYSEArca-2021-44) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to List and Trade Shares of the American Century Sustainable Growth ETF) (the “American Century Notice”).

<sup>16</sup> See Securities Exchange Act Release No. 92104 (June 3, 2021), 86 FR 30635 (June 9, 2021) (SR-NYSEArca-2021-46) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to List and Trade Shares of the Nuveen Santa Barbara Dividend Growth ETF, Nuveen Small Cap Select ETF, and Nuveen Winslow Large-Cap Growth ESG ETF Under NYSE Arca Rule 8.601-E) (the “Nuveen Notice”).

<sup>17</sup> See Securities Exchange Act Release No. 92958 (September 13, 2021), 86 FR

- Schwab Ariel ESG ETF<sup>18</sup>

The Exchange proposes to modify representations made in each Fund’s original filing that provided for the creation and redemption of shares using the Proxy Portfolio or cash. Specifically, the Exchange proposes to permit each Fund to use a Custom Basket, in addition to a Proxy Portfolio or cash, to create or redeem shares in accordance with its respective exemptive relief and current Rule 8.601-E. The Exchange believes that updating such representations to permit the Funds to use Custom Baskets, to the extent consistent with the terms of a Fund’s exemptive relief, would benefit the investing public and the marketplace by providing greater flexibility in the creation and redemption process for shares of Active Proxy Portfolio Shares and would promote competition among various ETF products.

Accordingly, the issuers of each Fund each represent that it and any person acting on behalf of the series of Active Proxy Portfolio Shares which are the subject of this filing will comply with Regulation Fair Disclosure under the Act,<sup>19</sup> including with respect to any Custom Basket. Each issuer also represents that for each Custom Basket

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51933 (September 17, 2021) (SR-NYSEArca-2021-77) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to List and Trade Shares of the Nuveen Growth Opportunities ETF Under NYSE Arca Rule 8.601-E) (the “Nuveen Growth Opportunities Notice”).

<sup>18</sup> See Securities Exchange Act Release No. 93264 (October 6, 2021), 86 FR 56989 (October 13, 2021) (SR-NYSEArca-2021-84) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to List and Trade Shares of the Schwab Ariel ESG ETF) (the “Schwab Notice”).

<sup>19</sup> 17 CFR 243.100-243.103. Regulation Fair Disclosure provides that whenever an issuer, or any person acting on its behalf, discloses material non-public information regarding that issuer or its securities to certain individuals or entities—generally, securities market professionals, such as stock analysts, or holders of the issuer’s securities who may well trade on the basis of the information—the issuer must make public disclosure of that information.

utilized by each Fund, each business day, before the opening of trading during the Exchange's Core Trading Session (as defined in Rule 7.34-E(a)), each Fund will make publicly available on its website the composition of any Custom Basket transacted on the previous business day, except a Custom Basket that differs from the applicable Proxy Portfolio only with respect to cash.

Finally, the issuers of each Fund each represent that the adviser and sub-adviser(s), as applicable, to each of the Funds each represent that, if the adviser and/or sub-adviser(s), as applicable, is registered as a broker-dealer or is affiliated with a broker-dealer, such adviser and/or sub-adviser(s), as applicable, has erected and will maintain a "fire wall" between the adviser and/or sub-adviser(s), as applicable, and personnel of the broker-dealer or broker-dealer affiliate, as applicable, with respect to access to information concerning the composition and/or changes to the applicable Fund's Actual Portfolio, Proxy Portfolio, and/or Custom Basket, as applicable. The issuers of each Fund each also represent that any person related to the investment adviser or Investment Company who make decisions pertaining to the applicable Fund's Actual Portfolio, Proxy Portfolio, and/or Custom Basket, as applicable, or who have access to non-public information regarding the Actual Portfolio, Proxy Portfolio, and/or Custom Basket, as applicable, or changes thereto are subject to procedures reasonably designed to prevent the use and dissemination of material non-public information regarding the Actual Portfolio, Proxy Portfolio, and/or Custom Basket, as applicable, or changes thereto.

In the event that (a) a Fund's adviser or sub-adviser(s), as applicable, becomes registered as a broker-dealer or becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes newly affiliated with



a broker-dealer, it will implement and maintain a “fire wall” with respect to personnel of the broker-dealer or broker-dealer affiliate, as applicable, regarding access to information concerning the composition and/or changes to the Actual Portfolio, Proxy Portfolio, and/or Custom Basket, as applicable, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the applicable Actual Portfolio, Proxy Portfolio, and/or Custom Basket, as applicable.

Any person or entity, including any service provider for any of the Funds, who has access to non-public information regarding the Actual Portfolio, Proxy Portfolio, and/or Custom Basket, as applicable, or changes thereto for a Fund will be subject to procedures reasonably designed to prevent the use and dissemination of material non-public information regarding the Actual Portfolio, Proxy Portfolio, or Custom Basket, as applicable, or changes thereto. Furthermore, any person or entity that is registered as a broker-dealer or affiliated with a broker-dealer, must have erected and will maintain a “fire wall” between the person or entity and the broker-dealer with respect to access to information concerning the composition and/or changes to such Actual Portfolio, Proxy Portfolio, or Custom Basket, as applicable.

Each Fund will comply with the above-described conditions as well as the conditions of the applicable exemptive order, and the Exchange proposes to update the listing rule for each Fund’s shares accordingly. Except for the changes noted above, all other representations made in the Prior Filings for each of the Funds remain unchanged and will continue to constitute continued listing requirements for each of the Funds.<sup>20</sup> The Funds will also continue to comply with the requirements of Rule 8.601-E. The

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<sup>20</sup> See notes 7-18, supra.

Funds each represent that that [sic] are currently in compliance with Rule 8.601-E, as amended by the Custom Basket Approval Order, and will continue to comply with all requirements of Rule 8.601-E, as amended by the Custom Basket Approval Order.

*The Natixis Model Funds*

The Natixis U.S. Equity Opportunities ETF, Natixis Vaughan Nelson Select ETF, and Natixis Vaughan Nelson Mid Cap ETF (the “Natixis Funds”) are series of the Natixis ETF Trust II. The Natixis ETF Trust II and NYSE Group, Inc. filed an application for an order under Section 6(c) of the 1940 Act for exemptions from various provisions of the 1940 Act and rules thereunder (the “Prior Natixis Application”).<sup>21</sup> On December 10, 2019, the Commission issued an order under the 1940 Act granting the exemptions requested in the Prior Natixis Application (the “Prior Natixis Exemptive Order”).<sup>22</sup>

The American Century Mid Cap Growth Impact ETF, American Century Sustainable Equity ETF, and American Century Sustainable Growth ETF (the “American Century Funds”) are series of the American Century ETF Trust. The American Century ETF Trust filed an application for an order under Section 6(c) of the 1940 Act for exemptions from various provisions of the 1940 Act and rules thereunder (the “American Century Application”).<sup>23</sup> On May 12, 2020, the Commission issued an order under the 1940 Act granting the exemptions requested in the American Century Application (the

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<sup>21</sup> See Investment Company Act Release No. 33684 (November 14, 2019) (File No. 812-14870).

<sup>22</sup> See Investment Company Act Release No. 33711 (December 10, 2019) (File No. 812-14870).

<sup>23</sup> See Investment Company Act Release No. 33841 (April 16, 2020) (File No. 812-15082).

“American Century Exemptive Order”).<sup>24</sup> The American Century Application and American Century Exemptive Order incorporate by reference the terms and conditions of the Prior Natixis Exemptive Order, as such order may be amended from time to time.

The Nuveen Dividend Growth ETF, Nuveen Small Cap Select ETF, Nuveen Winslow Large-Cap Growth ESG ETF, and Nuveen Growth Opportunities ETF (the “Nuveen Funds”) are series of the Nushares ETF Trust. The Nushares ETF Trust filed an application for an order under Section 6(c) of the 1940 Act for exemptions from various provisions of the 1940 Act and rules thereunder (the “Nuveen Application”).<sup>25</sup> On May 4, 2021, the Commission issued an order under the 1940 Act granting the exemptions requested in the Nuveen Application (the “Nuveen Exemptive Order”).<sup>26</sup> The Nuveen Application and Nuveen Exemptive Order incorporate by reference the terms and conditions of the Prior Natixis Exemptive Order, as such order may be amended from time to time.

The Schwab Ariel ESG ETF (the “Schwab Fund”) is a series of the Schwab Strategic Trust. The Schwab Strategic Trust filed an application for an order under Section 6(c) of the 1940 Act for exemptions from various provisions of the 1940 Act and rules thereunder (the “Schwab Application”).<sup>27</sup> On July 7, 2021, the Commission issued an order under the 1940 Act granting the exemptions requested in the Schwab

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<sup>24</sup> See Investment Company Act Release No. 33862 (May 12, 2020) (File No. 812-15082).

<sup>25</sup> See Investment Company Act Release No. 34243 (April 8, 2021) (File No. 812-15199).

<sup>26</sup> See Investment Company Act Release No. 34265 (May 4, 2021) (File No. 812-15199).

<sup>27</sup> See Investment Company Act Release No. 34298 (June 11, 2021) (File No. 812-15216).

Application (the “Schwab Exemptive Order”).<sup>28</sup> The Schwab Application and Schwab Exemptive Order incorporate by reference the terms and conditions of the Prior Natixis Exemptive Order, as such order may be amended from time to time.

Under the Prior Natixis Exemptive Order (and, accordingly, the exemptive orders described above that incorporate the terms and conditions of the Prior Natixis Exemptive Order), each of the Natixis Funds, American Century Funds, Nuveen Funds, and the Schwab Fund (collectively, the “Natixis Model Funds”) is required to publish a Proxy Portfolio, which is designed to closely track its daily performance but will not be a Fund’s Actual Portfolio. The Prior Natixis Application stated that a Natixis Model Fund’s Proxy Portfolio would be designed to reflect the economic exposures and risk characteristics of such fund’s actual holdings on each trading day, which would be achieved by performing an analysis of such fund’s Actual Portfolio (the “Factor Model”). Each Natixis Model Fund would have a universe of securities (the “Model Universe”) that would be used to generate its Proxy Portfolio. The Model Universe would be comprised solely of securities that a Natixis Model Fund can purchase and would be a financial index or stated portfolio of securities from which a Natixis Model Fund’s investments would be selected. The results of the Factor Model analysis of a Natixis Model Fund’s Actual Portfolio would then be applied to such fund’s Model Universe. The daily rebalanced Proxy Portfolio would then be generated as a result of this Model Universe analysis with the Proxy Portfolio being a small sub-set of the Model Universe. The Factor Model would be applied to both the Actual Portfolio and the Model Universe

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<sup>28</sup> See Investment Company Act Release No. 34323 (July 7, 2021) (File No. 812-15216).

to construct a Natixis Model Fund’s Proxy Portfolio that performs in a manner substantially identical to the performance of its Actual Portfolio. Investments made by the Natixis Model Funds will comply with the conditions set forth in the Prior Natixis Application and the Prior Natixis Exemptive Order.<sup>29</sup>

On August 31, 2020, and as amended on November 16, 2020 and December 8, 2020, the Natixis ETF Trust II sought to amend the Prior Natixis Exemptive Order (the “Updated Natixis Application”) to enable the Natixis Funds to use Creation Baskets<sup>30</sup> that include instruments that are not in the Proxy Portfolio, or are included in the Proxy Portfolio but in different weightings (i.e., for purposes of this filing, Custom Baskets).<sup>31</sup> On February 9, 2021, the Commission issued an order permitting the Natixis Funds to use Custom Baskets that include instruments that are not included, or are included with different weightings, in a Natixis Model Fund’s Proxy Portfolio (the “Updated Natixis Order”).<sup>32</sup>

The Exchange thus proposes to update the listing rules for each of the Natixis Model Funds to reflect the terms and conditions of the Updated Natixis Order.

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<sup>29</sup> See Natixis Approval Order, supra note 4; Natixis Vaughan Approval Order, supra note 10; American Century Approval Order, supra note 9; American Century Notice, supra note 15; Nuveen Notice, supra note 16; Nuveen Growth Opportunities Notice, supra note 17; Schwab Notice, supra note 18.

<sup>30</sup> Pursuant to the Prior Natixis Exemptive Order and the exemptive orders described above that incorporate the terms and conditions of the Prior Natixis Exemptive Order, a Creation Basket with respect to the Natixis Model Funds consists of the instruments that purchasers would deposit and that shareholders would receive upon purchasing or redeeming shares of the funds.

<sup>31</sup> See Investment Company Act Release No. 34171 (January 12, 2021) (File No. 812-15157).

<sup>32</sup> See Investment Company Act Release No. 34192 (February 9, 2021) (File No. 812-15157).

Specifically, the Exchange proposes to reflect that each of the Natixis Model Funds will comply with the terms of the Updated Natixis Application and the Updated Natixis Order and, accordingly, are permitted to use Custom Baskets that include instruments that are not included, or are included with different weightings, in a Natixis Model Fund's Proxy Portfolio.

*The T. Rowe Price Model Funds*

Shares of the T. Rowe Price Blue Chip Growth ETF, T. Rowe Price Dividend Growth ETF, T. Rowe Price Growth Stock ETF, T. Rowe Price Equity Income ETF, and T. Rowe Price U.S. Equity Research ETF (the "T. Rowe Funds") are issued by T. Rowe Price Exchange-Traded Funds, Inc. T. Rowe Price Exchange-Traded Funds, Inc. filed an application for an order under Section 6(c) of the 1940 Act for exemptions from various provisions of the 1940 Act and rules thereunder (the "Prior T. Rowe Application").<sup>33</sup> On December 10, 2019, the Commission issued an order under the 1940 Act granting the exemptions requested in the Prior T. Rowe Application (the "Prior T. Rowe Exemptive Order").<sup>34</sup>

Under the Prior T. Rowe Exemptive Order, the T. Rowe Funds are required to publish a Proxy Portfolio, which is a basket of securities and cash that, while different from a T. Rowe Fund's portfolio, is designed to closely track its daily performance. The Prior T. Rowe Application stated that each T. Rowe Fund's Proxy Portfolio will be determined such that at least 80% of its total assets will overlap with the portfolio

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<sup>33</sup> See Investment Company Act Release No. 33685 (November 14, 2019) (File No. 812-14214).

<sup>34</sup> See Investment Company Act Release No. 33713 (December 10, 2019) (File No. 812-14214).

weightings of such fund. Investments made by the T. Rowe Funds will comply with the conditions set forth in the Prior T. Rowe Application and the Prior T. Rowe Exemptive Order.<sup>35</sup>

On February 4, 2021, and as amended on March 30, 2021, T. Rowe Price Exchange-Traded Funds, Inc. sought to amend the Prior T. Rowe Exemptive Order (the “Updated T. Rowe Application”) to permit use of Creation Baskets<sup>36</sup> that include instruments that are not included, or are included with different weightings, in a T. Rowe Fund’s Proxy Portfolio (i.e., for purposes of this filing, Custom Baskets).<sup>37</sup> On May 18, 2021, the Commission issued an amended order permitting the T. Rowe Funds to use Custom Baskets that include instruments that are not included, or are included with different weightings in a T. Rowe Fund’s Proxy Portfolio (the “Updated T. Rowe Order”).<sup>38</sup>

The Exchange thus proposes to update the listing rules for the T. Rowe Funds to reflect the terms and conditions of the Updated T. Rowe Order. Specifically, the Exchange proposes to reflect that the T. Rowe Funds will comply with the terms of the Updated T. Rowe Application and the Updated T. Rowe Order and, accordingly, are permitted to use Custom Baskets that include instruments that are not included, or are

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<sup>35</sup> See T. Rowe Price Approval Order, supra note 8; T. Rowe Price Notice, supra note 12.

<sup>36</sup> Pursuant to the Prior T. Rowe Exemptive Order, a Creation Basket with respect to the T. Rowe Funds consists of the instruments that purchasers would deposit and that shareholders would receive upon purchasing or redeeming shares of the funds.

<sup>37</sup> See Investment Company Act Release No. 34248 (April 22, 2021) (File No. 812-15197).

<sup>38</sup> See Investment Company Act Release No. 34272 (May 18, 2021) (File No. 812-15197).

included with different weightings, in a T. Rowe Fund's Proxy Portfolio.

### *The Fidelity Model Funds*

Shares of the Fidelity Sustainability U.S. Equity ETF and Fidelity Women's Leadership ETF (the "Fidelity Funds") are issued by the Fidelity Covington Trust, Fidelity Beach Street Trust ("Beach Street"), Fidelity Management & Research Company ("FMR"), and Fidelity Distributors Corporation ("FDC") filed a ninth amended application for an order under Section 6(c) of the 1940 Act for exemptions from various provisions of the 1940 Act and rules thereunder (the "Prior Fidelity Application").<sup>39</sup> On December 10, 2019, the Commission issued an order (the "Prior Fidelity Exemptive Order") under the 1940 Act granting the relief sought in the Application.<sup>40</sup> The Fidelity Funds are subject to the relief set forth in the Prior Fidelity Exemptive Order because FMR is the investment adviser to the Fidelity Funds.

The Putnam Sustainable Future ETF, Putnam Sustainable Leaders ETF, Putnam Focused Large Cap Growth ETF, and Putnam Focused Large Cap Value ETF (the "Putnam Funds") are series of the Putnam ETF Trust. The Putnam ETF Trust filed an application for an order under Section 6(c) of the 1940 Act for exemptions from various provisions of the 1940 Act and rules thereunder (the "Putnam Application").<sup>41</sup> On May 10, 2021, the Commission issued an order under the 1940 Act granting the exemptions

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<sup>39</sup> See Investment Company Act Release No. 33683 (November 14, 2019) (File No. 812-14364).

<sup>40</sup> See Investment Company Act Release No. 33712 (December 10, 2019) (File No. 812-14364).

<sup>41</sup> See Investment Company Act Release No. 34245 (April 15, 2021) (File No. 812-15203).



requested in the Putnam Application (the “Putnam Exemptive Order”).<sup>42</sup> The Putnam Application and Putnam Exemptive Order incorporate by reference the terms and conditions of the Prior Fidelity Exemptive Order, as such order may be amended from time to time.

Under the Prior Fidelity Exemptive Order, each of the Fidelity Funds and Putnam Funds (collectively, the “Fidelity Model Funds”) is required to publish a Proxy Portfolio that is a basket of securities and cash that, while different from a fund’s portfolio, is designed to closely track its daily performance. Such Proxy Portfolio is comprised of (1) select recently disclosed portfolio holdings (“Strategy Components”); (2) liquid ETFs that convey information about the types of instruments in which the fund invests that are not otherwise fully represented by Strategy Components; and (3) cash and cash equivalents. Investments made by the Fidelity Model Funds will comply with the conditions set forth in the Prior Fidelity Application and the Prior Fidelity Exemptive Order.<sup>43</sup>

On October 30, 2020, and as amended on April 2, 2021, June 11, 2021, and June 30, 2021, Beach Street, FMR, FDC, and Fidelity Covington Trust sought to amend the Prior Fidelity Exemptive Order (the “Updated Fidelity Application”) to permit the use of Creation Baskets<sup>44</sup> that include instruments that are not included, or are included with

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<sup>42</sup> See Investment Company Act Release No. 34266 (May 10, 2021) (File No. 812-15203).

<sup>43</sup> See Fidelity Notice, *supra* note 13; Putnam Notice, *supra* note 14.

<sup>44</sup> Pursuant to the Prior Fidelity Exemptive Order, a Creation Basket with respect to the Fidelity Model Funds consists of the instruments that purchasers would deposit and that shareholders would receive upon purchasing or redeeming shares of the funds.

different weightings, in a fund's Proxy Portfolio (i.e., for purposes of this filing, Custom Baskets). On August 5, 2021, the Commission issued an order granting the relief requested (the "Updated Fidelity Order").

The Exchange thus proposes to update the listing rules for the Fidelity Model Funds to reflect the terms and conditions of the Updated Fidelity Order. Specifically, the Exchange proposes to reflect that the Fidelity Model Funds will comply with the terms of the Updated Fidelity Application and the Updated Fidelity Order and, accordingly, are permitted to use Custom Baskets that include instruments that are not included, or are included with different weightings, in a Fidelity Model Fund's Proxy Portfolio.

*Stance Equity ESG Large Cap Core ETF*

Shares of the Stance Equity ESG Large Cap Core ETF (the "Stance Fund" or "Blue Tractor Model Fund") are issued by The RBB Fund, Inc. The RBB Fund, Inc. filed an application for an order under Section 6(c) of the 1940 Act for exemptions from various provisions of the 1940 Act and rules thereunder (the "RBB Application").<sup>45</sup> On February 26, 2021, the Commission issued an order (the "RBB Exemptive Order") under the 1940 Act granting the exemptions requested in the RBB Application.<sup>46</sup> The RBB Application and RBB Exemptive Order incorporate by reference the terms and conditions of the exemptive order granted to Blue Tractor ETF Trust and Blue Tractor Group, LLC, as such order may be amended from time to time (the "Prior Blue Tractor Exemptive Order").<sup>47</sup>

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<sup>45</sup> See Investment Company Act Release No. 34189 (February 5, 2021) (File No. 812-15165).

<sup>46</sup> See Investment Company Act Release No. 34215 (February 26, 2021) (File No. 812-15165).

<sup>47</sup> See Investment Company Act Release No. 34221 (March 8, 2021) (File No. 812-

Under the Prior Blue Tractor Exemptive Order and thus the RBB Exemptive Order, the Stance Fund is required to publish a Proxy Portfolio that is a basket of securities and cash that, while different from the fund's portfolio, is designed to closely track its daily performance. Specifically, each day, a proprietary algorithmic process will be applied to the Stance Fund's portfolio to generate a basket of securities and cash the performance of which is designed to closely track the daily performance of the fund's portfolio. Investments made by the Stance Fund will comply with the conditions set forth in the RBB Exemptive Order and the Prior Blue Tractor Exemptive Order.<sup>48</sup>

On September 18, 2020, and as amended on January 19, 2021, Blue Tractor ETF Trust and Blue Tractor Group, LLC sought to amend the Prior Blue Tractor Exemptive Order (the "Updated Blue Tractor Application") to permit use of Creation Baskets<sup>49</sup> that include instruments that are not included, or are included with different weightings, in a fund's Proxy Portfolio (i.e., for purposes of this filing, Custom Baskets).<sup>50</sup> On March 9, 2021, the Commission issued an amended order that, among other things, permits the use of Custom Baskets that include instruments that are not included, or are included with

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15162). The Prior Blue Tractor Exemptive Order was granted in response to an application filed by Blue Tractor ETF Trust and Blue Tractor Group, LLC for an order under Section 6(c) of the 1940 Act for exemptions from various provisions of the 1940 Act and rules thereunder (the "Prior Blue Tractor Application"). See Investment Company Act Release Nos. 33682 (November 14, 2019) (Prior Blue Tractor Application) and 33710 (December 10, 2019) (Prior Blue Tractor Exemptive Order) (File No. 812-14625).

<sup>48</sup> See Stance Approval Order, supra note 11.

<sup>49</sup> Pursuant to the Prior Blue Tractor Exemptive Order and the RBB Exemptive Order, a Creation Basket with respect to the Stance Fund consists of the instruments that purchasers would deposit and that shareholders would receive upon purchasing or redeeming shares of the fund.

<sup>50</sup> See Investment Company Act Release No. 34194 (February 10, 2021) (File No. 812-15162).

different weightings in a fund's Proxy Portfolio (the "Updated Blue Tractor Order").<sup>51</sup>

The Exchange thus proposes to update the listing rule for the Stance Fund to reflect the terms and conditions of the Updated Blue Tractor Order. Specifically, the Exchange proposes to reflect that the Stance Fund will comply with the terms of the Updated Blue Tractor Application and the Updated Blue Tractor Order and, accordingly, are permitted to use Custom Baskets that include instruments that are not included, or are included with different weightings, in the Stance Fund's Proxy Portfolio.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>52</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>53</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The proposed rule change is designed to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest because it would permit each of the Funds to use Custom Baskets, to the extent consistent with their applicable exemptive relief and in accordance with amended NYSE Arca Rule 8.601-E. The Exchange believes that the proposal, which would permit the Funds to use Custom Baskets that include instruments that are not included, or are

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<sup>51</sup> See Investment Company Act Release No. 34221 (March 9, 2021) (File No. 812-15162).

<sup>52</sup> 15 U.S.C. 78f(b).

<sup>53</sup> 15 U.S.C. 78f(b)(5).

included with different weightings, in a Fund's Proxy Portfolio raises no novel issues under the Act.<sup>54</sup> In addition, the Funds' use of Custom Baskets would be consistent with, and contemplated by, amended Rule 8.601-E, and the Exchange believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market and, in general, protect investors and the public interest because, to the extent the Funds wish to utilize Custom Baskets, the Funds will continue to be required to meet the initial and continued listing criteria set forth in Rule 8.601-E.

The proposed rule change is also designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest because, as noted above, all other representations made in the prior filings for the Funds remain unchanged and will continue to constitute continuing listing requirements for the Funds.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,<sup>55</sup> the Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. As noted above, the proposed rule change reflects amendments to the exemptive orders applicable to the Funds and would thus permit the Funds to operate consistent with their exemptive relief.

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<sup>54</sup> See note 5, *supra*.

<sup>55</sup> 15 U.S.C. 78f(b)(8).

The Exchange does not believe that the proposed change imposes any burden on competition, and, to the extent that the proposed rule change would continue to permit listing and trading of the Funds, the Exchange believes that the proposal could promote competition among various ETF products, to the benefit of investors.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>56</sup> and Rule 19b-4(f)(6) thereunder.<sup>57</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>58</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>59</sup> the Commission may designate a shorter time if such action is consistent

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<sup>56</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>57</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

<sup>58</sup> 17 CFR 240.19b-4(f)(6).

<sup>59</sup> 17 CFR 240.19b-4(f)(6)(iii).

with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may take effect upon filing. The Commission notes that each Fund seeking to use Custom Baskets pursuant to this rule change represents that it is currently in compliance with Rule 8.601-E, as amended by the Custom Basket Approval Order, and will continue to comply with all requirements of Rule 8.601-E, as amended by the Custom Basket Approval Order. In addition, the Exchange represents that all other representations made in the prior filings for the Funds remain unchanged and will continue to constitute continuing listing requirements for the Funds. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because the proposed rule change does not raise any new or novel issues.<sup>60</sup> Accordingly, the Commission waives the 30-day operative delay and designates the proposal operative upon filing.<sup>61</sup>

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

#### IV. Solicitation of Comments

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<sup>60</sup> See the Custom Basket Approval Order, supra note 5. See also Securities Exchange Act Nos. 93546 (November 9, 2021) 86 FR 63429 (November 16, 2021) (SR-CboeBZX-2021-075) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Reflect a Modification to the Permitted Components of the Tracking Baskets of the Invesco Real Assets ESG ETF and Invesco US Large Cap Core ESG ETF).

<sup>61</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2022-30 on the subject line.

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEArca-2022-30. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change.



Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEArca-2022-30 and should be submitted on or before **[INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>62</sup>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

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<sup>62</sup> 17 CFR 200.30-3(a)(12).